



Australian Government  
IP Australia

# Proposals to streamline IP processes and support small business – Regulatory costs

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# Costings framework

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The Australian Government has committed to reducing red and green tape by \$1 billion per year. To help achieve this goal, the government has strengthened the regulation impact analysis process: the regulatory burden of all policy proposals are to be costed, and any proposals that increase regulatory compliance costs for Australian businesses and individuals must be offset by savings from other proposals.

Consistent with the Government's policy, this document sets out IP Australia's estimates of the change in regulatory compliance costs due to proposals to align and simplify business processes and to assist Small-to-Medium Enterprises (SMEs). Each proposal in these packages is costed separately.

Broadly, the costings aim to estimate the direct costs to business of complying with IP Australia's rules (both formal legislation and business processes). Consistent with the requirements of the Office of Best Practice Regulation (OBPR), the costings add ongoing compliance costs and one-off (start-up) regulatory costs, averaged over 10 years to produce a yearly figure.<sup>1</sup>

We estimate that the package would result in between \$65 000 and \$414 000 in annual regulatory savings, with \$240 000 as the mid-point estimate.

The Government's policy applies to regulatory costs imposed on Australian businesses, community groups and individuals.<sup>2</sup> For the purposes of this costing all users of the IP system are treated as businesses: IP rights are intended to promote commercial activities. Although some individuals (and occasionally community groups) apply for IP rights, this is generally in the context of a business venture (eg an individual is a sole trader engaged in business, or a community group has a trading business to raise funds).

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<sup>1</sup> OBPR, *Regulatory Burden Measurement Framework Guidance Note* (July 2014), p 5: [http://www.dpmc.gov.au/deregulation/obpr/reporting-publications/publications/guidance/docs/005\\_Regulatory\\_Burden\\_Measurement\\_Framework.pdf](http://www.dpmc.gov.au/deregulation/obpr/reporting-publications/publications/guidance/docs/005_Regulatory_Burden_Measurement_Framework.pdf)

<sup>2</sup> OBPR, *Regulatory Burden Measurement Framework Guidance Note*, p 4.

The costs have not been broken down between small, medium and large businesses. Typically, the costs do not vary significantly between small, medium and large enterprises, but rather between represented and unrepresented applicants.

The methodology, data and calculations are set out as follows:

Costing framework:

- Section 1 - Ongoing costs.
- Section 2 - One-off costs.
- Section 3 - Assigning a confidence rating to a specific cost estimate.
- Section 4 – Volume and time change estimates
- Section 5 – Illustrative example – self-service amendments.

Costings for proposals:

- Cost estimates for each proposal.

## 1. Ongoing costs

Typically, ongoing costs for IP regulatory changes involve a change in the amount of time it takes a customer or their agent to complete the activity that is changed by the proposal. They apply to activities that will continue to be completed for the foreseeable future. For example, if there was a change to streamline the filing of an application (the activity), the savings would be the time saved by a customer in filing their application more quickly, or the reduced fees for an agent who can file their customer's application more quickly.

In broad terms, the ongoing regulatory costs are calculated by the following basic formula:

$$A \times (B / 60) \times C = D$$

Where:

A = the annual volume of activities per year.

B = the change in time taken to complete the activity in minutes.

C = the relevant hourly rate of the person completing the activity.

D = the total change in annual regulatory compliance costs.

However, due to a number of variables that must be accounted for a number of specific sub-calculations are required.

## Calculation

Three sub-calculations are used when calculating the ongoing regulatory cost for each year. These reflect three types of interactions (each with different costs):

- Unrepresented Australian customers (1)
- Represented Australian customers – this includes the cost of instructing the attorney (2) and the cost of purchasing the attorney's services (3)
- Attorneys representing foreign applicants (4)

These sub-calculations are performed in relation to both lower and upper estimates of the volume of activities and the change in time to complete a single activity. Where the volume is expected to vary significantly from year to year (other than ordinary annual increases in line with economic growth) the sub-calculations are performed separately for each year up to 10 years and then averaged.

### *Sub-calculation 1 – unrepresented Australian customers*

For a given yearly volume the change in internal labour costs of completing the relevant activity for unrepresented Australian customers is as follows:

$$A_1 \times (B_1 / 60) \times C_1 = D_1$$

Where:

$A_1$  = the total number of times the changed activity will be completed by unrepresented applicants for the relevant IP right(s) in a year.

$B_1$  = the change in time in minutes for an unrepresented customer to complete the changed activity.

$C_1$  = the internal hourly rate of a professional employee of the unrepresented Australian customer.

$D_1$  = the annual change in cost for this type of customer.

### *Sub-calculation 2 – Attorneys representing Australian applicants and the applicants represented by those attorneys*

Represented Australian customers have two costs. The first cost is the cost of an employee of the customer instructing an agent to do the task. The second cost is the purchase costs of the agent's services. For example, if the agent and an employee of the customer spend an hour conferring on a particular task, the cost to the customer is not only the cost of the agent's fees for the hour, but also the cost of paying their employee for that hour.

For a given yearly volume and range, the change in costs for represented Australian customers is as follows:

$$(A_2 \times (B_2 / 60) \times C_2) + (A_3 \times (B_3 / 60) \times C_3) = D_{2,3}$$

Where:

$A_2$  = the total number of times the changed activity will be completed by represented Australian customers for the relevant IP right(s) in a year.

$B_2$  = the change in time in minutes for a represented customer to instruct their agent to complete the changed activity.

$C_2$  = the internal hourly rate of a professional employee of the represented Australian customer.

$A_3$  = the total number of times the activity will need to be completed by represented Australian customers in a year for the relevant IP right(s).

$B_3$  = the change in time in minutes for an agent to complete the changed activity.

$C_3$  = whichever of the following rates is appropriate:

(a) If the change in cost is not passed on<sup>3</sup> by the agent, either:

- a. the internal hourly rate of an administrative employee of the agent
- b. the internal hourly rate a professional employee of the agent

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<sup>3</sup> Note that the assumption is that agents would pass on changes in cost to their client (at the higher charge-out rate) if the change involved:

- creating a new activity or removing an existing activity, as the activity would be a discrete billable item
- increasing the time it takes to perform an existing activity
- reducing the time it takes to perform an existing activity, where the reduction is more than 60 minutes per activity.

Where the change would reduce the time taken to perform an activity by less than 60 minutes, we assume that agents would not pass on the savings to their customers and the savings would instead accrue to the agent at the lower internal wage rates.

(b) If the change in cost is passed on by the agent, either:

- a. the hourly charge-out rate for work done by an administrative employee of the agent
- b. the hourly charge-out rate for work done by a professional employee of the agent.

$D_{2,3}$  = the annual change in cost for this type of customer, including both the internal wage costs of the customer's employee instructing the agent, and the costs of the agent's time to do the activity.

*Sub-calculation 3 – Australian agents of foreign customers*

For a given yearly volume and range, the change in internal labour costs of completing the relevant activity for an agent of a foreign customers is as follows:

$$A_4 \times (B_4 / 60) \times C_4 = D_4$$

Where:

$A_4$  = the total number of times the activity will need to be completed by represented foreign customers in a year for the relevant IP right(s).

$B_4$  = the change in time in minutes for an agent to complete the changed activity.

$C_4$  = either<sup>4</sup>:

(a) the internal hourly rate of a professional employee of the agent.

(b) The internal hourly rate of an administrative employee of the agent.

$D_4$  = the annual change in cost for agents of this type of customer.

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<sup>4</sup> Note that, as only regulatory compliance costs to Australian businesses are included, we are not concerned with the external charge-out rate that Australian attorneys charge foreign customers. Instead we are concerned with the internal costs to Australian attorneys when they are performing services for foreign customers.



### Calculation – total ongoing costs for Australian customers and agents

The total change in ongoing costs for a given year (E) is the sum of the annual change in costs for each type of customer/agent in sub-calculations 1 – 3:

$$D_1 + D_{2,3} + D_4 = D$$

Note that if the volume (A) is expected to vary from year to year, this calculation is performed separately for each year over 10 years and is then averaged.

Note that, where ranges of lower and upper estimates of inputs are provided for either volume (A) or change in time (B) an absolute lower estimate and an absolute upper estimate is calculated. That is, the lower estimate of costs is calculated using both the lower estimates of volume and change in time, whereas the upper estimate of cost is calculated using both the upper estimates of volume and change in time. Once lower and upper estimates of cost have been calculated, a mid-point between the lower and upper is taken.

### Inputs

For the calculations in the previous section the following constant inputs are used:

$A_1 - A_4$  = the estimates of annual number of times that activity will be completed by the relevant type of customer, for the particular IP right, in a given year.

To get  $A_1 - A_4$  for each of the options costed we need to use the further sub-calculation  $A_v \times A_p$ , where:

$A_v$  = Specific inputs for the number of times an activity is estimated to occur in a given year are provided in the *Costs of individual proposals/options* below.

$A_p$  = the percentages of the relevant type of customer for each IP right (as a proportion of the total number of customers for that right) are as follows:<sup>5</sup>

Type of right	Unrepresented Australian Customer	Represented Australian Customer	Represented International Customer
All rights	29.44%	20.51%	49.74%
Designs	15.45%	24.92%	56.69%
Patent - standard	0.68%	9.08%	90.14%

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<sup>5</sup> Internal IP Australia Data based on filed applications in 2013.

Patent - provisional	24.70%	70.80%	4.01%
Patent - innovation	25.61%	41.85%	31.94%
Plant Breeder's Rights	6.63%	33.98%	49.67%
Trade marks	44.84%	17.72%	34.37%

$B_1 - B_4$  = Specific inputs for the change in time for each type of customer/agent are provided in the *Costs of individual proposals/options* below.

$C_1 - C_4$  = the various hourly wage rates used are as follows:

Type of person	Initial Hourly rate	On-cost multiplier <sup>6</sup>	Final Hourly Rate
Customer - internal wage rate for generic professional employee <sup>7</sup>	\$43.70	1.75	76.48
Agent – internal wage rate for administrative employee (eg secretary) <sup>8</sup>	\$34.20	1.75	59.85
Agent – internal wage rate for professional employee (eg patent attorney) <sup>9</sup>	\$49.40	1.75	86.45
Agent – charge-out rate for administrative employee (eg secretary) <sup>10</sup>	\$140.00	N/A	140.00
Agent – charge-out rate for professional employee (eg patent attorney) <sup>11</sup>	\$400.00	N/A	400.00

<sup>6</sup> Where the hourly rate refers to the internal cost to a business an on-cost multiplier of 1.75 should be used to account for overheads etc: see OBPR, *Regulatory Burden Measurement Framework Guidance Note*, p15. Where the hourly rate reflects the external charge-out rate of an agent the on-cost multiplier is not used as overheads are factored into the fees that agents charge their clients.

<sup>7</sup> IP applications would ordinarily be handled by a professional or managerial employee in most businesses, so the previous OBPR wage rate for professionals of \$43.70 is used instead of the default economy-wide wage rate.

<sup>8</sup> Default economy-wide wage rate: see OBPR, *Regulatory Burden Measurement Framework Guidance Note*, p 15.

<sup>9</sup> The Australian Bureau of Statistics (ABS) provides data for the cost of employing attorneys, in particular category 271214: Intellectual Property Lawyers (which, for the purposes of the data, includes patent and trade marks attorneys), are estimated to earn \$49.40 per hour on average.

<sup>10</sup> This estimate of the charge-out rate for experienced administrative staff is derived from consultations conducted by KPMG on behalf of IP Australia with attorney profession in preparing IP Australia's regulatory audit.

## 2. One-off costs

In addition to ongoing costs, there are often one-off or start-up regulatory costs associated with regulatory change: costs that must be incurred initially due to the change but are not incurred after that.

For changes to the IP system, one-off costs generally fall into one of three categories:

- Costs to reconfigure information technology (IT) systems to accommodate the change (5).
- Costs to train staff in the new systems (6).
- Costs for attorneys and IP lawyers to familiarise themselves with any change to the legislation (7).

These costs are calculated as explained below. The final estimates (including lower and upper estimates, where appropriate) are averaged over 10 years (or the life of the proposal, if shorter) and added to the ongoing costs.

### IT costs

The calculation for IT costs is as follows:

$$A_5 \times (B_5 / 60) \times C_5 = D_5$$

Where:

$A_5$  = the number of agent firms: currently 635.<sup>12</sup>

$B_5$  = the estimate of time (in minutes) to reconfigure the IT system of one agent firm: this will change with individual proposals, and may be given as a lower and upper estimate if there is uncertainty.

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<sup>11</sup> The hourly charge-out rate for lawyers ranges from \$200 per hour for a junior solicitor in a small firm to \$800 per hour for a partner in a large firm: . <http://www.legallawyers.com.au/legal-topics/law-firm-sydney/solicitor-prices/> . Anecdotal evidence suggests that patent and trade marks attorneys are likely to employ a similar pricing structure. \$400 per hour has been chosen as a likely rate for a typical IP lawyer or attorney.

<sup>12</sup> Number of firms estimated by counting number of firms with an IP Australia attorney code (<http://www.ipaustralia.gov.au/get-the-right-ip/trade-marks/search-for-a-trade-mark/attorney-codes/>), avoiding double counting where one firm has multiple codes.

$C_5$  = the hourly rate for costs of an IT professional: currently \$79.28 (\$45.30<sup>13</sup> wage rate multiplied by 1.75 for the standard OBPR on-cost multiplier to account for overheads etc).

$D_5$  = the total cost to reconfigure IT systems.

### Staff training costs

The calculation for staff training costs has an additional variable: whether the staff to be trained are administrative or professional employees. The calculation is as follows:

$$A_6 \times (B_6 / 60) \times C_6 = D_6$$

Where:

$A_6$  = the number of:

(a) If the staff to be trained are professional staff, the number of registered patent and trade marks attorneys: currently 1352.<sup>14</sup>

(b) If the staff to be trained are administrative employees, the estimated number of non-attorney staff working in attorney firms\*\*\*: currently 3209.<sup>15</sup>

$B_6$  = the estimate of time (in minutes) to train a single staff member in the new systems, and may be given as a lower and upper estimate if there is uncertainty.

$C_6$  = the hourly costs of:

(a) Professional employees of an agent: currently \$86.45.<sup>16</sup>

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<sup>13</sup> Based on data from the ABS, the average gross pay of an IT professional is approximately \$87,953 per annum (ABS cat. No. 6302.0, Table 10I, Total earnings; Administrative and Support Services), and based on a 237 day working year and a 8.2 hour day (ABS cat. No. 6306.0 - Employee Earnings and Hours, Australia, May 2012. The latest data from the ABS shows that technicians and trade workers work 41.1 hours per week which equates to 8.2 hours per day.) comes to \$45.3 per hour

<sup>14</sup> IP Australia internal data from Professional Standards Board Secretariat, including all registered attorneys and attorney applicants,

<sup>15</sup> Non-attorney staff number estimated from IP Australia data sourced from sample of 9 attorney firms which indicated that, in total they employed 222 attorneys out of a total of 749 employees, which gives a ratio of non-attorney employees to attorneys of 2.37:1. Applying this ratio to the total number of attorney (1352) gives an estimate of 3209 non-attorney administrative employees.

<sup>16</sup> See sources for hourly rates (wage rate x 1.75 on-cost multiplier) given above in table for inputs  $C_1 - C_4$ .

(b) Administrative employees of an agent: currently \$59.85.<sup>17</sup>

$D_6$  = the total cost to train staff.

### **Legislation Awareness Costs**

The calculation of costs for professional staff to familiarise themselves with any legislative changes is as follows:

$$A_7 \times (B_7 / 60) \times C_7 = D_7$$

Where:

$A_7$  = the number of registered patent and trade marks attorneys<sup>18</sup>: currently 1352.<sup>19</sup>

$B_7$  = the estimate of time (in minutes) to for a single attorney to familiarise themselves with the legislative change, and may be given as a lower and upper estimate if there is uncertainty.

$C_7$  = the hourly costs of a professional employee of an agent: currently \$86.45.<sup>20</sup>

$D_7$  = the total cost to for staff to familiarise themselves with the legislative change.

### **Total one-off costs**

The average annual one-off cost for a given year is produced by summing the three one-off cost categories and averaging them over 10 years (or, if shorter, the life of the proposal):

$$(D_5 + D_6 + D_7) / 10 = D$$

Note that this is calculated for both lower and upper estimates of the time taken for the various one-off activities.

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<sup>17</sup> See sources for hourly rates (wage rate x 1.75 on-cost multiplier) given above in table for inputs  $C_1 - C_4$ .

<sup>18</sup> Note that the information for staff training and legislation awareness is derived from attorney registration data held by IP Australia and does not include IP lawyers and other types of non-attorney IP professionals. IP Australia recognises that the absence of data for unregistered IP professionals will result in a small under estimation of the one-off costs in some cases.

<sup>19</sup> IP Australia internal data from Professional Standards Board Secretariat, including all registered attorneys and attorney applicants,

<sup>20</sup> See sources for hourly rates (wage rate x 1.75 on-cost multiplier) given above in table for inputs  $C_1 - C_4$ .

### 3. Assigning a confidence rating to a specific cost estimate

Once the sub-totals for the on-going and one-off costs are calculated for each year (for both lower and upper estimates), and averaged over 10 years, the final result will give a lower, mid-point and upper estimate of the total cost.

Because the calculations provide for uncertainty in the volume of activities or the change in time to complete the activity, it is appropriate to assign a confidence rating to the final mid-point result based how far away the lower and upper estimates are from the mid-point estimate.

The following scale is used:

**High confidence:** where the lower and upper cost estimates are less than 10% from the mid-point.

**Medium confidence:** where the lower and upper cost estimates are between 10% and 50% from the mid-point.

**Low confidence:** where the lower and upper cost estimates are greater than 50% from the mid-point.

### 4. Volume and time change estimates

Note that, unless otherwise stipulated for a specific proposal, the volume and change in time estimates for all proposals are derived as follows:

- Volume estimates are based on a single data point, being our most recent internal data for the volume of the particular activity (usually the previous year). Due to normal variations from year to year it is highly unlikely that future years will have exactly the same, and so it is appropriate to use a range of lower and upper estimates to acknowledge the uncertainty. However, it is difficult to estimate the likely fluctuations and resulting uncertainty. IP Australia considers that a variance of + or - %10 is a reasonable estimate in the absence of better data. Accordingly the lower and upper estimates are given as approximately + / - 1-% of the previous year, unless we have data to support a different variance.
- Lower and upper estimates in the change in time to complete an activity are based on our knowledge of the proposal and our assessment of the likely increase or decrease for particular customers. Lower estimates are what we think is the shortest reasonable change in time for an efficient customer to complete the task. Upper estimates are what

we think is the longest reasonable change in time for an inefficient customer to complete the task.

## 5. Illustrative example - Self-service amendments

This proposed change would involve permitting customers to make simple administrative amendments directly into IP Australia's systems, instead of having to formally request, wait for and receive the Commissioner's or Registrar's leave to amend. The change would mean that for all of the relevant amendments, the applicant would save time in filing a formal request and in receiving and filing confirmation of the leave to amend.

Note that we assume that making the actual amendment (entering the data into e-services) would take the same time as drafting an existing amendment: the saving derives from the fact that instant notification that the amendment was made is received, and the customer does not have to wait for, receive and file a separate later confirmation of the amendment.

The data inputs specific to this proposal are as follows:

Inputs for ongoing costs			
<b>IP right</b>	All rights		
<b>Type of change</b>	Changing existing process <sup>21</sup>		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	5900	7300	Conservative estimate of 6600 administrative amendments per year across all rights. <sup>22</sup>
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-1	-2	Although customers will still have to access e-Services and draft the proposed amendment, they will save time in not having to receive, note and file confirmation that the amendment has been allowed.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-1	-2	Clients would not need to receive and file separate confirmation from

<sup>21</sup> Discussions with former attorney indicate that attorney firms would usually build in the cost of receiving and forwarding the confirmation of the amendment into a single fee for making the amendment.

<sup>22</sup> Based on a sample of IP Australia's records, each year administrative amendments are made for around 5% of all current applications and registrations. Total current applications and registrations owned by Australians is 10% of 160 000 patents plus 65% of 300 000 trade marks plus 40% of 26 000 designs plus 40% of 2000 PBRs, making 220 000 IP rights.

			their attorney.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-6	-12	Attorneys would not have to receive, note and file the separate correspondence or forward it on to the client. <sup>23</sup>
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-6	-12	As above.
<b>Type of agent staff doing work</b>	Professional <sup>24</sup>		
Inputs for one-off costs			
Input	Lower	Upper	Notes
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	No IT changes required, as customers would use existing e-Services portal.
<b>Time to train staff (B<sub>6</sub>)</b>	10	20	Show staff how to make an amendment in e-Services and inform staff not to expect later confirmation of amendment.
<b>Type of agent staff to be trained</b>	Professional		
<b>Time to read new legislation (B<sub>7</sub>)</b>	5	10	Note changes in legislation to permit self-service amendments, Office-initiated amendments and amendment of particulars.

When the above inputs are used in conjunction with the constant inputs and the calculations described in the general methodology section above, the following estimates are produced.

#### *Self-service amendments as an illustrative example of calculations*

The calculations for part of this proposal's costs are set out in full as an illustrative example. All subsequent proposals and options use the same formula, though the specific calculation is not set out in full for each proposal.

#### *Extended formula for on-going costs for self-service amendments*

The general methodology described above gives the following formula for calculating on-going costs for a single estimate for volume and change in time:

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<sup>23</sup> Estimates from discussion with IP Australia staff member who previously practiced as an attorney.

<sup>24</sup> We assume that an attorney would oversee the amendment and check the confirmation, even if made by a secretary or paralegal.



$$((A_{V1} \times A_{P1}) \times (B_1 / 60) \times C_1) + ((A_{V2} \times A_{P2}) \times (B_2 / 60) \times C_2) + ((A_{V3} \times A_{P3}) \times (B_3 / 60) \times C_3) + ((A_{V4} \times A_{P4}) \times (B_4 / 60) \times C_4) = D$$

Note this calculation must be repeated for both lower and upper estimates for volume and change in time. Additionally, if the volume estimates change each year then the calculation must be performed for each separate year (up to 10 years) and then averaged.

*Example calculation of on-going costs for self-service amendments*

Using the lower estimates for this specific proposal (see table above) and the relevant constant inputs from section 1, the specific inputs for this calculation are as follows:

$$A_{V1} - A_{V4} = 5900$$

$$A_{P1} = 0.2944$$

$$A_{P2} - A_{P3} = 0.2051$$

$$A_{P4} = 0.4974$$

$$B_1 - B_2 = -1$$

$$B_3 - B_4 = -6$$

$$C_1 - C_2 = \$76.48$$

$$C_3 - C_4 = \$86.45$$

The calculation for the single year with lower estimates for both volume and change in time would be:

$$((5900 \times 0.2944) \times (-1 / 60) \times \$76.48) + ((5900 \times 0.2051) \times (-1 / 60) \times \$76.48) + ((5900 \times 0.2051) \times (-6 / 60) \times \$86.45) + ((5900 \times 0.4974) \times (-6 / 60) \times \$86.45) = -\$39587.63$$

This would then need to be repeated for upper estimates and for different years (if the volume varied annually).

*Extended formula for one-off costs for self-service amendments*

The general methodology described above gives the following formula for calculating on-going costs for a single estimate for volume and change in time:

$$((A_5 \times (B_5 / 60) \times C_5) + (A_6 \times (B_6 / 60) \times C_6) + (A_7 \times (B_7 / 60) \times C_7)) / 10 = D$$

Note this calculation must be repeated for both lower and upper estimates for volume and change in time.

*Example calculation of one-off costs for self-service amendments*

Using these lower bound estimates for this specific proposal (see table above) and the relevant constant inputs from section 2, the specific inputs for this calculation are as follows:

$$A_5 = 635$$

$$B_5 = 0$$

$$C_5 = \$79.28$$

$$A_6 = 1352$$

$$B_6 = 10$$

$$C_6 = \$86.45$$

$$A_7 = 1352$$

$$B_7 = 5$$

$$C_7 = \$86.45$$

The calculation for the averaged single-year one-off costs with lower estimates for both volume and change in time would be:

$$\begin{aligned} & ((635 \times (0 / 60) \times \$79.28) + (1352 \times (10 / 60) \times \$86.45) + (1352 \times (5 / 60) \times \$86.45)) \\ & / 10 = \$2922.01 \end{aligned}$$

This would then need to be repeated for upper estimates.

*Total regulatory costs for self-service amendments*

The total regulatory cost for the lower estimates for a single year is the ongoing costs added to the one-off costs:

$$-\$39587.63 + \$2922.01 = -\$36665.62 \text{ (ie a regulatory saving of approximately } \$37 \text{ 000 per year).}$$

Using the general methodology for all calculations, we get the following final lower, upper and mid-point estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$36666	-\$92119	-\$64392
<b>Confidence in mid-point estimate</b>	Medium		

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# Costings for proposals

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The following sections provide the inputs and estimated regulatory costs for each specific proposals or option.

## 1. Aligning renewals

### A. Renewal grace periods

*Grace period for all rights with rights remaining live during period*

This change would involve amending the patents, trade marks, designs and PBR legislation to:

- introduce a renewal grace period for PBR
- clarify that rights remain in force during the grace period and
- align status terms where possible.

This change would make it simpler for businesses dealing with issues of infringement of patents and designs during grace periods to understand the rules for the grace period and the status of IP rights during this period. However, businesses dealing with infringement of PBR during the new grace period would need to spend time familiarising themselves with the grace period, which they do not currently have. Other costs and benefits that cannot be calculated include:

- PBR owners are able to keep their rights despite paying a renewal fee late
- Parties in design infringement disputes would not incur the costs of seeking a court decision on the status of a design, and
- PBR competitors may incur opportunity costs by having to wait another 6 months before exploiting a PBR.

The data inputs specific to the proposal are as follows:

Patents:

Inputs for ongoing costs			
IP right	Patents - standard		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	5	20	Estimated number of businesses affected by whether patents are in force during renewal grace period.

			Based on around 130,000 patents in force and low number of court actions on this issue. It is difficult to estimate this figure and the uncertainty results in a wide range of lower to upper volumes.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-60	-120	Affected business with less experience in the system spends less time understanding legislation, case law and status of patent in detail.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	Affected businesses leave understanding status to their agents.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-15	-30	Agents of affected businesses spend less time understanding status by looking at legislation and case law in detail. As agents are more familiar with the system the saving from this is expected to be substantially less than for unrepresented applicants.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-15	-30	As above.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	5	10	Time taken to note changes to law for the four IP rights.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$864	\$1,069	\$966
Confidence in mid-point estimate	Medium		

Designs:

Inputs for ongoing costs			
IP right	Designs		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	0	5	Estimated number of businesses affected by whether designs are in force during renewal grace period. Based on around 26,000 designs in force and low number of court actions on this issue. It is difficult to estimate this figure.
Time ( $B_1$ ) - unrepresented Australian customers	-60	-120	Affected business with less experience in the system spends less time understanding status of design by looking at legislation and case law in detail.
Time ( $B_2$ ) - represented Australian customers	0	0	Affected businesses leave understanding status to their agents.
Time ( $B_3$ ) – agents of Australian customers	-15	-30	Agents of affected businesses spend less time understanding status by looking at legislation and case law in detail.
Time ( $B_4$ ) – agents of foreign customers	-15	-30	As above.
Type of agent staff doing work	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	

<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Counted in patents part.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$0	-\$294	-\$147
<b>Confidence in mid-point estimate</b>	Low		

PBR:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	PBR		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	0	5	Estimated number of businesses affected by whether PBR are in force during renewal grace period. Based on around 2000 PBRs in force and expected low number of court actions on this issue. It is difficult to estimate this figure.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	60	120	Affected business with less experience in the system spends more time understanding status of patent by looking at legislation and case law in detail.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	Affected businesses leave understanding status to their agents.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	15	30	Agents of affected businesses spend more time understanding status by looking at legislation and case law in detail.

<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	15	30	As above.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Counted in patents part.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$0	\$497	\$248
<b>Confidence in mid-point estimate</b>	Low		

### ***B. Early payment of renewal fees***

*Limit payment of renewal fees to 12 months before the renewal date*

This change would involve amending the patents, designs and PBR legislation to limit the payment of renewal fees to no earlier than 12 months before the renewal date.

This change would mean that businesses that are currently paying renewal fees early would have to pay renewal fees more often rather than in a batch.

The data inputs specific to the proposal are as follows:



Patents:

Inputs for ongoing costs			
<b>IP right</b>	Patents		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – AV<sub>4</sub>)</b>	600	740	Estimate of number of renewal fees paid early by businesses (0.5% of 134,000, +/- 10%) <sup>25</sup>
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	5	10	Businesses have to pay fee every year instead.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	1	5	Businesses provide fee to agent.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	1	5	Agents would organise to pay renewal every year.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	1	5	Agents would organise to pay renewal every year.
<b>Type of agent staff doing work</b>	Administrative		
Inputs for one-off costs			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Simple change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

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<sup>25</sup> IP Australia data. Around 134,000 patents are renewed or continued each year. Analysis of when such fees are paid shows that around 0.5% are paid early.

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$956	\$4,992	\$2,974
Confidence in mid-point estimate	Low		

Designs:

Inputs for ongoing costs			
IP right	Designs		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	16	20	Number of renewal fees paid early by Australian businesses (0.5% of 3,700, +/- 10%) <sup>26</sup>
Time ( $B_1$ ) - unrepresented Australian customers	5	10	Businesses have to pay fee every year instead.
Time ( $B_2$ ) - represented Australian customers	1	5	Businesses provide fee to agent.
Time ( $B_3$ ) – agents of Australian customers	1	5	Agents would organise to pay renewal every year.
Time ( $B_4$ ) – agents of foreign customers	1	5	Agents would organise to pay renewal every year.
Type of agent staff doing work	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	
Time to train staff ( $B_6$ )	0	0	
Type of agent staff to be trained			
Time to read new legislation ( $B_7$ )	0	0	Counted in patents part.

<sup>26</sup> IP Australia data. Around 3,700 designs are renewed each year. Analysis suggests around 0.5% are paid early.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$39	\$185	\$112
Confidence in mid-point estimate	Low		

PBR:

Inputs for ongoing costs			
IP right	PBR		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	9	11	Number of renewal fees paid early by Australian businesses (0.5% of 2,000, +/- 10%) <sup>27</sup>
Time ( $B_1$ ) - unrepresented Australian customers	5	10	Businesses have to pay fee every year instead.
Time ( $B_2$ ) - represented Australian customers	1	5	Businesses provide fee to agent.
Time ( $B_3$ ) – agents of Australian customers	1	5	Agents would organise to pay renewal every year.
Time ( $B_4$ ) – agents of foreign customers	1	5	Agents would organise to pay renewal every year.
Type of agent staff doing work	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	
Time to train staff ( $B_6$ )	0	0	
Type of agent staff to be			

<sup>27</sup> IP Australia data. Around 2,000 PBRs are renewed each year. Analysis suggests around 0.5% are paid early.

<b>trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Counted in patents part.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$19	\$103	\$62
<b>Confidence in mid-point estimate</b>	Low		

### ***C. Renewal notices***

*Remove the requirement to issue renewal notices to all trade mark applicants*

This change would involve amending the trade marks legislation to no longer require IP Australia to issue renewal notices. IP Australia would issue notices to unrepresented owners as a business practice.

This change would mean that a number of agents that no longer need renewal notices would no longer incur the costs of receiving and handling them. IP Australia would also reduce its administration costs, although these are not included here.

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Trade Marks		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	27,000	33,000	Total number of renewal notices, +/- 10%.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	0	Would continue to receive renewal notices.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-1	-2	Would no longer handle renewal notices from their agent.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-1	-2	Would no longer have to handle unwanted renewal notices.

<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-1	-2	Would no longer have to handle unwanted renewal notices.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Simple change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$20,123	-\$49,193	-\$34,658
<b>Confidence in mid-point estimate</b>	Medium		

Total for Harmonised renewals proposal

<b>Estimates of Regulatory Cost - total</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$19,442	-\$44,779	-\$32,375
<b>Confidence in mid-point estimate</b>	Medium		

## 2. Re-examination / revocation

This change would involve amending the trade marks, designs and PBR re-examination/revocation provisions to better align them with the patents processes. Re-examination requests would need to state the grounds of the request and pay a fee. Both the requester and the applicant/owner of the right would receive and be able to respond to the re-examination report. Revocation may be the result of re-examination and the IP owner and interested parties would have a right to be heard before the right was revoked.

The change would also involve some minor amendments to streamline patents re-examination and make it more similar to ordinary patents examination. Multiple re-examination reports could be issued and responded to. Issues raised must be overcome within 6 months, but requesting a hearing or a court proceeding would 'stop the clock'. If the applicant requests leave to amend, re-examination would proceed based on the proposed amendments. Leave to amend would be granted after all grounds of objection have been overcome.

The changes to the revocation / re-examination process are not expected to have any significant practical difference in the time spent on re-examination or revocation. In practice the matters are already being handled with a reasonably similar process and the legislative changes are often merely clarifying how the legislation is applied. For example, under the trade marks proposal requestors would need to state the grounds of the request, yet this is likely to already occur in practice. Similarly, although the patents proposal would provide for multiple formal reports, in practice multiple pieces of correspondence between the parties are already involved. Accordingly, any change in the time taken to complete the re-examination / revocation process is likely to be minor and the final costs negligible in light of the small number of these requests.

The introduction of the fee for trade marks re-examinations is expected to reduce the number of inappropriate requests for revocation, thereby saving both parties the time of dealing with those requests.

A small increase in designs re-examinations is expected due to the availability of designs re-examination being more transparent and better known to stakeholders, resulting in a small increase in time spent on re-examinations. No savings are expected for PBR as the changes are essentially cosmetic: the actual process and their use are not expected to be significantly different.

The data inputs specific to the patents aspect proposal are as follows:

Inputs for ongoing costs			
IP right	Patents		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	60	100	Number of re-examination requests each year is between 30 and 50, as per IP Australia internal data. Figures are doubled, as each re-examination affects 2 parties (applicant/patentee and requestor).
Time ( $B_1$ ) - unrepresented Australian customers	0	0	
Time ( $B_2$ ) - represented Australian customers	0	0	
Time ( $B_3$ ) – agents of Australian customers	0	0	
Time ( $B_4$ ) – agents of foreign customers	0	0	
Type of agent staff doing work	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	No IT changes necessary.
Time to train staff ( $B_6$ )	0	0	Note re-exam occurs so infrequently that attorneys are unlikely to train all staff in their procedures. Assume that attorneys would only turn their attention to new re-exam requirements when a case arose.
Type of agent staff to be trained	-		
Time to read new legislation ( $B_7$ )	30	60	Time to read and familiarise self with legislation change. Note this incorporates the costs of reading the legislation for the trade marks and designs changes (to avoid double counting).

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$5844	\$3895	\$4870
Confidence in mid-point estimate	Medium		

The data inputs specific to the trade marks aspect proposal are as follows:

Inputs for ongoing costs			
IP right	Trade marks		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	0	40	There are currently 40 requests on average (with two parties per request). At one end of the spectrum the introduction of a fee could have no change on the number of requests at all. At the other end of the spectrum, the fee is not likely to deter valid requests. Our internal data indicates that approximately half of the requests made are successful. <sup>28</sup> Accordingly, we estimate the maximum reduction due to the fee as being 20 cases (half of the total) with a total of 40 parties, as each request involves 2 parties.
Time ( $B_1$ ) - unrepresented Australian customers	-180	-300	Estimate that each request takes 3 to 5 hours of an unrepresented party's time. <sup>29</sup>
Time ( $B_2$ ) - represented Australian customers	-90	-150	Estimate each request involves 1.5 – 2.5 hours of time spent instructing an attorney. <sup>30</sup>
Time ( $B_3$ ) – agents of Australian customers	-240	-480	Estimate each request involves 4 to 8 hours of attorney time. <sup>31</sup>
Time ( $B_4$ ) – agents of foreign	-240	-480	As above.

<sup>28</sup> Eg internal data shows that of the 16 requests filed in the first 5 months of 2014, IP Australia issued a notice of intention to revoke in 9 cases.

<sup>29</sup> Figure based on estimates of time spent on an examination with one adverse report, derived from regulatory audit costings prepared by KPMG in consultation with stakeholders.

<sup>30</sup> Figure based on estimates of time spent on an examination with one adverse report, derived from regulatory audit costings prepared by KPMG in consultation with stakeholders.

<sup>31</sup> Figure based on estimates of time spent on an examination with one adverse report, derived from regulatory audit costings prepared by KPMG in consultation with stakeholders.



customers			
Type of agent staff doing work	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems (B <sub>5</sub> )	0	0	
Time to train staff (B <sub>6</sub> )	0	0	
Type of agent staff to be trained	-		
Time to read new legislation (B <sub>7</sub> )	0	0	Note legislation familiarisation costs are aggregated for all changes in the patents calculation above.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$0	-\$60605	-\$30302
Confidence in mid-point estimate	Low		

The data inputs specific to the designs aspect proposal are as follows:

Inputs for ongoing costs			
IP right	Designs		
Input	Lower	Upper	Notes
Volume (A <sub>V1</sub> – A <sub>V4</sub> )	1	10	Expect that improved transparency around existence of designs re-exam would result in re-exams increasing from 1 to 5 per year – however, there is considerable uncertainty in this figure.
Time (B <sub>1</sub> ) - unrepresented Australian customers	300	600	Estimate that an unrepresented customer spends 5 – 10 hours on a designs examination with one adverse report. <sup>32</sup>

<sup>32</sup> Figure based on estimates of time spent on an examination with one adverse report, derived from regulatory audit costings prepared by KPMG in consultation with stakeholders.

<b>Time (B<sub>2</sub>) - represented Australian customers</b>	120	360	Estimate that represented customers spend 2 – 6 hours instructing an attorney on an examination with 1 adverse report. <sup>33</sup>
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	180	360	Estimate that attorneys spend between 3 and 6 hours on an examination with 1 adverse report. <sup>34</sup>
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	180	360	As above.
<b>Type of agent staff doing work</b>			
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Note legislation familiarisation costs are aggregated for all changes in the patents calculation above.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$543	\$11246	\$5895
<b>Confidence in mid-point estimate</b>	Low		

Adding the estimates for patents, trade marks and designs (and noting no change for PBR) the total cost estimates are:

<sup>33</sup> Figure based on estimates of time spent on an examination with one adverse report, derived from regulatory audit costings prepared by KPMG in consultation with stakeholders.

<sup>34</sup> Figure based on estimates of time spent on an examination with one adverse report, derived from regulatory audit costings prepared by KPMG in consultation with stakeholders.

Total Estimates of Regulatory Cost (patents, trade marks, and designs)			
	Lower	Upper	Mid-point
<b>Average annual cost</b>	\$6387	-\$45464	-\$19537
<b>Confidence in mid-point estimate</b>	Low		

### 3. Extensions of time

This change would involve better aligning the extension of time provisions across the IP rights, improving clarity and consistency in their application, and making the administrative requirements for shorter extensions of time less onerous for applicants and owners.

Customers would benefit from having broadly the same degree of flexibility and fairness in extensions of time, regardless of the IP right. There is also expected to be an efficiency gain to business due to the increased harmonisation and certainty in applying for extensions of time. The proposal will also create more regular and standardised processes for the attorney profession and this is expected to lead to cost savings for their clients. Third parties are also expected to benefit as the proposal will resolve IP rights issues within a reasonable time. It should be noted that these benefits to third parties are not included in the calculations below, as it is not possible to estimate them with any confidence.

The proposal is outlined in the following table with the main changes marked in *italics*.

Extension type	Patents	Trade Marks	Designs	PBR
<b>Error or omission by agency</b> Non-discretionary No time limit No fee <i>Extension allowed for renewal grace period but not renewal date</i> <i>Streamlined process for short extensions (&lt;3 months)</i>	Yes	Yes	Yes	Yes
<b>Error or omission by applicant</b> <i>Up to 12 months only</i> Extension of time is advertised Third parties may oppose	Yes	Yes	Yes	Yes *No fee for some PBR extensions

<p><i>Extension allowed for renewal grace period but not renewal date</i></p> <p>Standard fee (see below for details)</p> <p><i>Streamlined process for short extensions (&lt;3 months)</i></p>				
<p><b>Circumstances beyond control of applicant</b></p> <p>Non-discretionary</p> <p>No time limit</p> <p>Extension of time is advertised</p> <p>Third parties may oppose</p> <p><i>Extension allowed for renewal grace period but not renewal date</i></p> <p>Standard fee (see below for details)</p> <p><i>Streamlined process for short extensions (&lt;3 months)</i></p>	Yes	<p>Yes</p> <p><i>*Scope of this extension modified (see below for details)</i></p>	Yes	<p>Yes</p> <p><i>*No fee for some PBR extensions</i></p>
<p><b>Due care taken by applicant</b></p> <p>Non-discretionary</p> <p><i>No time limit</i></p> <p>Extension of time is advertised</p> <p>Third parties may oppose</p> <p><i>Extension allowed for renewal grace period but not renewal date</i></p> <p>Standard fee (see below for details)</p> <p><i>Streamlined process for short extensions (&lt;3 months)</i></p>	Yes	Yes	Yes	<p>Yes</p> <p><i>*No fee for some PBR extensions</i></p>
<p><b>Special circumstances</b></p> <p>Non-discretionary</p> <p>No time limit</p> <p>Extension of time is advertised</p> <p>Third parties may oppose</p> <p><i>Extension allowed for renewal grace period but not renewal date</i></p> <p>Standard fee (see below for details)</p> <p><i>Streamlined process for short extensions (&lt;3 months)</i></p>	No	<p>Yes</p> <p><i>*Scope of this extension modified</i></p>	No	No

## Notes

### Standard fee:

The following standard fee would apply for all extensions of time unless otherwise specified:

- Base fee (eg \$100) for any extension up to 3 months
- Additional fee (eg \$100) per month for every month that exceeds 3 months

Consistent with OBPR guide lines, the fees have not been included in the regulatory costs, as direct financial costs are excluded.<sup>35</sup>

### Plant Breeder's Rights:

Extensions of time would become available for more (but not all) PBR timeframes. Any changes would be consistent with UPOV requirements.

### Circumstances beyond control of applicant:

The scope of this extension would be modified for trade marks only, to ensure that it is more aligned with the other rights.

There are a number of aspects to this proposal, and each of them is costed below:

### *Align the extension of time provisions for plant breeder's rights with those of the other IP rights*

The legislation would be amended to substantially align the extension of time provisions for PBR applicants and owners with those for the other IP rights. This would remove confusion for some of our customers and enable IP Australia to streamline its processes across the four IP rights. It would also benefit PBR owners who could use newly available extensions to perform actions late, such as paying renewal fees, and still maintain their rights. However, this benefit is likely to be small and is difficult to quantify. Only 330 PBR applications were filed in 2013 and around 2000 PBR applications and grants are in force at any one time.<sup>36</sup> Only a small fraction of these are likely to need an extension of time.

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<sup>35</sup> OBPR, *Regulatory Burden Measurement Framework Guidance Note*, p 4.

<sup>36</sup> IP Australia data and *Australian Intellectual Property Report 2014*, p 12.

*Better define the 'special circumstances' extension for trade marks and align the 'circumstances beyond applicant/owner control' extension for trade marks with the other IP rights*

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Trade marks		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	na	na	There are estimated to be zero ongoing costs for this aspect, as customers would simply use the correct extension of time provision for the situation
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	0	
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	0	0	
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	0	
<b>Type of agent staff doing work</b>			
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	30	60	Read and understand a moderate length amendment, including understanding new legislative test.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$5844	\$11688	\$8766
Confidence in mid-point estimate	Medium		

*Allow extensions of time for renewal grace periods but not renewal dates, for all IP rights*

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
IP right	All rights		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	na	na	No ongoing costs are expected for this aspect, as it simply removes a redundant provision, as an extension of time for a renewal period has the same effect as an extension of time for a grace period.
Time ( $B_1$ ) - unrepresented Australian customers	0	0	
Time ( $B_2$ ) - represented Australian customers	0	0	
Time ( $B_3$ ) – agents of Australian customers	0	0	
Time ( $B_4$ ) – agents of foreign customers	0	0	
Type of agent staff doing work			
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	
Time to train staff ( $B_6$ )	0	0	
Type of agent staff to be trained			
Time to read new legislation ( $B_7$ )	1	2	Note simple legislative change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$195	\$390	\$292
Confidence in mid-point estimate	Medium		

*Simplify and align the extension of time fees across all IP rights*

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
IP right	All rights		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	6790	8290	Based on recent annual total number of requests for extension of time for all rights of 7540
Time ( $B_1$ ) - unrepresented Australian customers	-10	-30	Less time spent working out what fee to pay
Time ( $B_2$ ) - represented Australian customers	0	0	Attorney deals with this
Time ( $B_3$ ) – agents of Australian customers	0	-10	Potentially less time spent working out what fee to pay. For an efficient attorney, this is unlikely to be an ongoing cost.
Time ( $B_4$ ) – agents of foreign customers	0	-10	
Type of agent staff doing work	Administrative		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	
Time to train staff ( $B_6$ )	0	0	
Type of agent staff to be trained	Administrative		
Time to read new legislation ( $B_7$ )	5	30	Read and understand moderate complexity legislative change.



Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$24490	-\$145642	-\$85066
<b>Confidence in mid-point estimate</b>	Low		

*For all rights, limit the 'error or omission by applicant/owner' extension to 12 months*

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	All rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (<math>A_{V1} - AV_4</math>)</b>	0	2563	Volume calculated by adding no. of EOT granted for each right that are for more than 12 months. Range based on 0% to 100% granted for 'error or omission by applicant/owner' as no data available on reason for extension.. Patents = 578; TM = 1938; D = 48; PBR = 0
<b>Time (<math>B_1</math>) - unrepresented Australian customers</b>	30	60	The customer will need to provide additional evidence to demonstrate that they had taken due care. Represented applicants may save some time in completing the paperwork.
<b>Time (<math>B_2</math>) - represented Australian customers</b>	20	60	
<b>Time (<math>B_3</math>) – agents of Australian customers</b>	10	20	May be some additional paperwork for the more stringent provision
<b>Time (<math>B_4</math>) – agents of foreign customers</b>	10	20	
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT</b>	0	0	No change as existing EOT

<b>systems (B<sub>5</sub>)</b>			provision would be used
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	A fairly simple change – choice of EOT provision changes for EOT greater than 12 months.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$195	\$148259	\$74227
<b>Confidence in mid-point estimate</b>	Low		

*Make the 'despite due care' extension available for all IP rights and have no limit on the period of the extension*

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	All rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	na	na	Changing the EOT provision chosen won't affect the time taken
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>			
<b>Time (B<sub>2</sub>) - represented Australian customers</b>			
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>			
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>			
<b>Type of agent staff doing work</b>			
<b>Inputs for one-off costs</b>			

Input	Lower	Upper	Notes
Time to reconfigure IT systems (B <sub>5</sub> )	0	0	
Time to train staff (B <sub>6</sub> )	0	0	
Type of agent staff to be trained			
Time to read new legislation (B <sub>7</sub> )	1	10	Read and understand fairly simple legislative change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$195	\$1948	\$1071
Confidence in mid-point estimate	Low		

*Introduce a streamlined process for short extensions of time (3 months or less)*

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
IP right	All rights		
Input	Lower	Upper	Notes
Volume (A <sub>V1</sub> – A <sub>V4</sub> )	2700	3300	Volume based on no. EOT requests for 6 months or less. Estimate of 3000 based on 50% granted for less than 3 months as no firm data available. Patents = 1360; TM = 4560; D = 112; PBR = 0
Time (B <sub>1</sub> ) - unrepresented Australian customers	0	-30	Will spend less time on the process.
Time (B <sub>2</sub> ) - represented Australian customers	0	-10	
Time (B <sub>3</sub> ) – agents of Australian customers	0	-10	
Time (B <sub>4</sub> ) – agents of	0	-10	

<b>foreign customers</b>			
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Note simple legislative change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$195	-\$68510	-\$34158
<b>Confidence in mid-point estimate</b>	Low		

*Total costs for all aspects of this proposal*

Adding up the totals for all aspects of the proposal, we get the following estimates:

<b>Estimates of Regulatory Cost - Total</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$17866	-\$51867	-\$34868
<b>Confidence in mid-point estimate</b>	Low		

## 4. Writing requirements

This change would involve two things:

- When deciding on the outcome of an examination of an innovation patent, the examiner would no longer be required to decide *in writing*: the decision could be made by clicking on a button in one of IP Australia's internal IT systems.
- When notifying the applicant of the outcome of the examination or of certain other matters, IP Australia would no longer be required to do this in writing: it could be done electronically or by other means if IP Australia so chooses. However, although the legislative change will provide flexibility, there is no proposal to immediately change the actual notification process: this will continue to be done by an official report for the foreseeable future.

This proposal would have no regulatory compliance costs. Applicants would see no change in what they receive from IP Australia for the foreseeable future and would not have to change any of their current administrative processes. Since there will be no change to what customers see or need to do, no one-off costs for training or education will be incurred.

## 5. Defining how documents are filed

This change would involve consolidating the current provisions on how documents may be filed into two new provisions for each right, an 'approved means' and a 'preferred means'. Approved means and preferred means would be defined in notices issued by the Commissioner or Registrar, available on the IP Australia website.

The change would mean that an applicant would save time in identifying the means for filing documents without having to check which method to use.

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
IP right	All rights		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	94500	115500	Around 105 000 applications for IP rights were made in 2013, and at

			least one document would be filed from each application.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	0	Customers are currently able to check the IP Australia website to determine the filing methods they can use. We assume customers would use the website (which won't change), not the legislation (which will change) to determine what filing methods are available. Accordingly there will be no change in the time spent on the activity.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	As above.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	0	0	As above.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	0	As above.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	No changes to IT systems would be required
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	No training required
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Agents would read the amended IP legislation with two new provisions for filing documents.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$195	\$390	\$292
<b>Confidence in mid-point estimate</b>	Medium		

## 6. Official Journals and Registers

This change would:

- remove the legislative requirements to maintain and publish Official Journals;
- amend the time periods so that they commence from the date the action occurred and was entered in the Register, rather than the date of publication of a notice; and
- replace all specific notification requirements for all the IP rights with general requirements to record prescribed particulars in the Register and to publish particulars at the time they are entered in the Register.

Customers would use AusPat, ATMOSS and other online search databases and publications to obtain official information about applications, granted rights and IP Australia's practices.

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
<b>IP right</b>	All rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (<math>A_{V1} - AV_4</math>)</b>	na	na	No ongoing costs or benefits have been estimated, as customers would set up their systems to receive alerts as they do now.
<b>Time (<math>B_1</math>) - unrepresented Australian customers</b>	0	0	
<b>Time (<math>B_2</math>) - represented Australian customers</b>	0	0	
<b>Time (<math>B_3</math>) – agents of Australian customers</b>	0	0	
<b>Time (<math>B_4</math>) – agents of foreign customers</b>	0	0	
<b>Type of agent staff doing work</b>	na		
Inputs for one-off costs			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (<math>B_5</math>)</b>	0	30	Customers may need to reconfigure their alerts
<b>Time to train staff (<math>B_6</math>)</b>	0	10	
<b>Type of agent staff to be</b>	Administrative		

<b>trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Minor changes

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$195	\$6108	\$3151
<b>Confidence in mid-point estimate</b>	Low		

## 7. Self-service amendments

See the illustrative example on page 13.

## 8. Signatures

This change would involve removing the requirement for signatures in the patent legislation for actions where there is a minimal risk of them being done without proper authorisation.<sup>37</sup> The authenticity of these transactions would be verified using other information provided in the documents.

The time taken for Australian businesses to provide documents to IP Australia would be reduced, as signatures would no longer need to be obtained.

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Patents		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	1350	1650	It is estimated that signatures would be required for around 5% of patent applications. In 2013, there were 29,717 patent applications. <sup>38</sup>
<b>Time (B<sub>1</sub>) - unrepresented</b>	-5	-10	The customer would save time in

<sup>37</sup> Patents Regulations 3.1(g), 5.26(1) and 15.2 and Patents Act 1990, 151(4)(c)

<sup>38</sup> *Australian Intellectual Property Report 2014*, page 8



<b>Australian customers</b>			not having to provide signatures for actions with minimal risk. Applicants would also save time in not having to obtain multiple signatures where there are multiple parties.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-5	-10	Customers would not have to provide signatures for these actions while instructing agents, sometimes involving multiple parties.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-1	-5	Agent does not need to spend time obtaining signatures from their customers for these actions.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-1	-5	Agent does not need to spend time obtaining signatures from their customers for these actions.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	No changes to IT systems would be required
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	No training required
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Understand and determine which documents no longer require a signature for authentication.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$2145	-\$10829	-\$6487
<b>Confidence in mid-point estimate</b>	Low		

## 9. Certificates

This change would involve removing the requirement for certificates to be issued during examination, registration and grant for all rights.

Instead of receiving a certificate, customers could download extracts of the Register at any time to use this to prove certain facts. This would reduce the handling time for unwanted electronic and printed certificates and enabling extracts of the Register to be downloaded as needed.

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
<b>IP right</b>	All rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – AV<sub>4</sub>)</b>	36000	44000	IP Australia issues around 40 000 certificates a year. <sup>39</sup>
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-1	-2	Customer does not need to spend time handling certificates and would have greater flexibility in obtaining the information if it was required (i.e. by downloading the content they require). This estimate is the net saving in time.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-1	-2	
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0-1	0-2	Applicants are able to download the content they require
<b>Type of agent staff doing work</b>	Administrative		
Inputs for one-off costs			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems</b>	0	0	No changes to IT systems would be

<sup>39</sup> 34 000 for registration of a trade mark + 6 000 for registration of a design + 700 for examination of a design + 250 for examination of an innovation patent + 200 for grant of PBR + 100 for registration of patent and trade mark attorneys. Sourced from IP Australia internal statistics

<b>(B<sub>5</sub>)</b>			required.
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	No training required.
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Understanding that certificates would no longer be issued for examination, registration and grant.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$38541	-\$94297	-\$66419
<b>Confidence in mid-point estimate</b>	Medium		

## 10. Address for correspondence

This change would involve amending:

- the plant breeder's rights and designs legislation to align the address provisions with the other IP rights
- the patents and designs regulations to remove any reference to an address for correspondence, and
- the patents regulations to remove an obsolete reference.

Removing references to an address for correspondence is the only part of this proposal that is likely to affect regulatory costs for Australian business.

This proposal would save unrepresented small to medium enterprises and individuals from having to consider whether to provide an address for correspondence to IP Australia in addition to an address for service, providing a net benefit to Australian business.

The data inputs specific to the patents aspects of the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Patents		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>

<b>Volume (A<sub>v1</sub> – AV<sub>4</sub>)</b>	180	220	Based on an estimate of 200 applications not providing an address for correspondence. This is 50% of the annual number of patents and designs applications that currently provide an address for correspondence each year (assumes a 50-50 split between patents and designs, given the lack of more accurate data).
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-1	-5	Will no longer have to provide an address for correspondence, or consider doing so.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-1	-5	
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-1	-5	
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-1	-5	
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	na		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Minor change

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$6	-\$836	-\$421
<b>Confidence in mid-point estimate</b>	Low		

The data inputs specific to the designs aspects of the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Designs		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (<math>A_{V1} - AV_4</math>)</b>	180	220	Based on an estimate of 200 applications not providing an address for correspondence. This is 50% of the annual number of patents and designs applications that currently provide an address for correspondence each year (assumes a 50-50 split between patents and designs, given the lack of more accurate data).
<b>Time (<math>B_1</math>) - unrepresented Australian customers</b>	-1	-5	Will no longer have to provide an address for correspondence, or consider doing so.
<b>Time (<math>B_2</math>) - represented Australian customers</b>	-1	-5	As above.
<b>Time (<math>B_3</math>) – agents of Australian customers</b>	-1	-5	As above.
<b>Time (<math>B_4</math>) – agents of foreign customers</b>	-1	-5	As above.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (<math>B_5</math>)</b>	0	0	Agents do not generally provide an AFC in addition to AFS
<b>Time to train staff (<math>B_6</math>)</b>	0	0	
<b>Type of agent staff to be trained</b>	na		
<b>Time to read new legislation (<math>B_7</math>)</b>	1	2	Minor change

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	-\$44	-\$1072	-\$558
Confidence in mid-point estimate	Low		

Adding the estimates for patents and designs the total cost estimates are:

Total Estimates of Regulatory Cost (patents and designs)			
	Lower	Upper	Mid-point
Average annual cost	-\$50	-\$1908	-\$979
Confidence in mid-point estimate	Low		

## 11. Third party requests for examination of standard patents

This change would involve allowing third parties to simply request that the Commissioner examine a standard patent application. Such requests would then be expedited and examined sooner. This would simplify and align the third party request system for standard patents with the system for innovation patents and designs.

IP Australia estimates that under the proposal three more third parties would request examination each year, incurring costs as follows:

Inputs for ongoing costs			
IP right	Standard patents		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	2	4	Estimate of number of extra third parties who would request examination (3 +/- 1).
Time ( $B_1$ ) - unrepresented Australian customers	30	60	Time spent drafting and sending letter to IP Australia. Derived from data from IP Australia's 2014 regulation audit. Unrepresented customers would spend more time than attorneys.
Time ( $B_2$ ) - represented	10	30	Time spent by applicant instructing their attorney. Derived from data

<b>Australian customers</b>			from IP Australia's 2014 regulation audit.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	10	30	Time spent drafting and sending letter to IP Australia. Derived from data from IP Australia's 2014 regulation audit.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	10	30	Time spent drafting and sending letter to IP Australia. Derived from data from IP Australia's 2014 regulation audit.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	No IT changes required.
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	No training for staff required.
<b>Type of agent staff to be trained</b>	N/A		
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Not required.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$41	\$244	\$142
<b>Confidence in mid-point estimate</b>	Low		

IP Australia estimates that all five patent applicants affected would request examination in case the patent is of value. One of these five patent applicants would otherwise not have requested examination, instead choosing to let the application lapse at a later date.<sup>40</sup> Therefore one patent applicant per year would incur additional application costs as follows:

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<sup>40</sup> Around 20% of applications lapse without the applicant requesting examination.

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Standard patents		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	0	2	Estimate of number of applicants who would have application examined that would not have otherwise (1 +/- 1).
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	36	1140	The time spent on examination varies from 36 minutes for the 50% of cases that are simple to 19 hours for the small percentage that are complex. Data from IP Australia's 2014 regulation audit.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	30	60	Applicants would instruct their attorney and receive correspondence. Derived from data from IP Australia's 2014 regulation audit.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	30	900	The time spent on examination varies from 30 minutes for the 50% of cases that are simple to 15 hours for the small percentage that are complex. Data from IP Australia's 2014 regulation audit.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	30	900	As above.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	No IT changes required.
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	No training for staff required.
<b>Type of agent staff to be trained</b>	N/A		
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Not required.

Using the calculations described in the general methodology outlined above, we get the following final estimates:



<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$0	\$3,461	\$1,730
<b>Confidence in mid-point estimate</b>	Low		

However, there are likely to be some unquantifiable savings due to reduced delay costs. As IP Australia's backlog for examining standard patents in the mechanical field<sup>41</sup> is currently around 18 months, expediting examination would mean that the third party would know sooner whether they were free to operate in the field covered by the patent application's claims or not. It is likely that the third party would wait until the outcome of examination before launching their product, so the reduced delay may mean that they would be able to start trading sooner. However, IP Australia is not aware of any data or reliable estimates of how much profit a business could be expected to forego in the extra 12 month period. Accordingly, no specific estimates can be provided. Similarly, IP Australia is unable to estimate the business costs to applicants arising from reduced periods to examination.

Under the proposed process the third party would no longer request the Commissioner to direct the applicant to ask for examination and the Commissioner would no longer issue such a direction. However, the number and nature of the administrative steps would be the same:

	<b>Current Process</b>	<b>New process</b>
Step 1	3 <sup>rd</sup> party files request for the Commissioner to direct examination and pays request fee at same time.	3 <sup>rd</sup> party files request for examination and pays half of examination fee at the same time.
Step 2	Applicant receives and considers direction to request examination.	Applicant receives and considers invitation to pay (ITP) the remaining half of the examination fee.
Step 3	Applicant files request for examination and pays examination fee.	Applicant pays remaining half of examination fee.

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<sup>41</sup> Most third party requests relate to inventions in the mechanical field.

Note that the fees would change. However, direct financial costs are excluded from regulatory compliance costs.<sup>42</sup>

Note also that, on average, only two requests are received per year under the current system.<sup>43</sup> This may increase under the proposal to expedite such requests.

This would mean that customers would make no ongoing savings that could easily be calculated. The only quantifiable costs would be one-off costs associated with agents training their staff in the new procedure and attorneys familiarising themselves with the legislative change.

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Standard patents		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – AV<sub>4</sub>)</b>	0	4	Average of 2 requests per year.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	0	No change. The number and nature of the administrative steps is effectively the same.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	As above.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	0	0	As above.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	0	As above.
<b>Type of agent staff doing work</b>	Administrative.		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	1	2	Simply inform staff to use the new request form.

<sup>42</sup> OBPR, *Regulatory Burden Measurement Framework Guidance Note*, p 4.

<sup>43</sup> IP Australia data shows that only eight 3<sup>rd</sup> party requests were filed between 2009 and 2013.

<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Attorneys to quickly note simple legislative change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
<b>Average annual cost</b>	\$515	\$1030	\$772
<b>Confidence in mid-point estimate</b>	Medium		

## 12. Colour patent drawings

This change would involve amending Schedule 3 of the Patent Regulations so that colour drawings could be used in all specifications where necessary to describe the invention.

Customers would be able to file patent specifications with colour images, to reduce the time it takes to understand some applications.

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
IP right	Patents		
Input	Lower	Upper	Notes
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	750	2250	Based on 29,717 patent applications filed in 2013 <sup>44</sup> and assuming at least one drawing is filed in each application. Very few applications require colour drawings: we estimate that this is likely to be in the order of approximately 5% (approximately 1500), though there is considerable uncertainty, so we use a range of + / - 50% of that

<sup>44</sup> Australian Intellectual Property Report 2014, page 8

			figure.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-1	-2	Applicants would save time in not having to make a high quality black and white copy of their original colour drawings.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	No need to instruct agent for this.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-1	-2	Applicants would save time in not having to make a high quality black and white copy of their original colour drawings.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-1	-2	As above.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	No changes to IT systems would be required.
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	No training required.
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Understand changes in Schedule 3 of the Patent Regulations to allow colour drawings.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$554	-\$4103	-\$2329
<b>Confidence in mid-point estimate</b>	Low		

### 13. Extensions of patent term – notices to the Department of Health

IP Australia does not have a preferred option at this stage. However, the costings for option 2 are provided here for information only. This option would involve repealing section 76A of the Patents Act. Section 76A requires that owners of extended patents provide the Department of

Health with the amount and origin of any Commonwealth funds spent in the research and development of the patented drug.

This change would mean that owners of extended patents would save the administration and time required to prepare and provide this information.

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Patents		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (<math>A_{V1} - AV_4</math>)</b>	27	33	It is estimated that 30 returns per year are prepared to meet the requirements of Section 76A.
<b>Time (<math>B_1</math>) - unrepresented Australian customers</b>	-60	-120	Applicant no longer has to prepare a return outlining amount and origin of any Commonwealth funds spent in R&D of the drug.
<b>Time (<math>B_2</math>) - represented Australian customers</b>	-60	-120	Applicant no longer needs to instruct agent to complete this activity.
<b>Time (<math>B_3</math>) – agents of Australian customers</b>	-60	-120	Agent does not need to prepare a return outlining amount and origin of any Commonwealth funds spent in R&D of the drug.
<b>Time (<math>B_4</math>) – agents of foreign customers</b>	-60	-120	As above.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (<math>B_5</math>)</b>	0	0	No changes to IT systems would be required.
<b>Time to train staff (<math>B_6</math>)</b>	0	0	No training required.
<b>Type of agent staff to be trained</b>	NA		
<b>Time to read new legislation (<math>B_7</math>)</b>	1	2	Attorneys would briefly note that section 76A had been repealed.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
<b>Average annual cost</b>	-\$1807	-\$4503	-\$3155
<b>Confidence in mid-point estimate</b>	Medium		

Option 3 is to improve the section 76A reporting requirement to collect valuable and consistent data on R&D spending. This option needs to be further defined before it can be reliably costed.

#### 14. Acceptance timeframe for trade marks

This change would involve reducing the acceptance timeframe for trade mark applications from 15 months from the date of the examiner's report to six months from the report date. In addition, one of the extensions currently available to trade mark applicants (under regulation 4.12(3)) would be abolished. This would be commensurate with the acceptance period in other countries and Australia's designs system. The grounds for deferring acceptance would be also expanded to include responding to an objection under section 41. However, most applicants would currently be using other extensions to obtain extra time for this purpose and so would not save any time.

This option would have no impact on the 88% of applicants who currently have their trade mark accepted within the six month time frame. Reducing the number of different types of extensions that are available to applicants would reduce complexity for trade mark applicants.

In addition, there would be savings to third party competitors who might have a similar mark and are awaiting resolution of the trade mark examination before releasing their product. We cannot quantify these costs, as IP Australia has no data on how many businesses might be awaiting the resolution of an application, nor do we know the value to those businesses of the missed opportunity to release their product sooner.

The data inputs specific to reducing the acceptance timeframe are as follows:

Inputs for ongoing costs			
IP right	Trade marks		
Input	Lower	Upper	Notes
<b>Volume (<math>A_{V1} - AV_4</math>)</b>	1170	1430	We estimate that approximately 1300

			customers are expected to request an extension of time or deferment of acceptance rather than working to have their application accepted within the 6 month time frame. This proportion is estimated at 30% of the 4340 applications with an acceptance time between 6 and 15 months. We expect that the majority of customers would simply complete the work earlier in accordance with the new timeframe.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	60	120	Would have to apply for an extension of time or deferment.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	30	45	Would have to brief attorney.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	30	45	Would have to apply for an extension of time or deferment.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	30	45	As above.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Minor change

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>

<b>Average annual cost</b>	\$107090	\$220883	\$163986
<b>Confidence in mid-point estimate</b>	Medium		

The data inputs specific to abolishing the reg 4.12(3) extension are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Trade marks		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	900	1100	Assumes that of the 4% of applications that currently obtain this extension, around 1000 would resolve their application without needing an extension
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-60	-120	Time saved in not needing to apply for an extension
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-30	-45	Time saved in not needing to brief attorney to apply for an extension
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-30	-45	Time saved in not needing to apply for an extension
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-30	-45	
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Minor change

Using the calculations described in the general methodology outlined above, we get the following final estimates:



Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
<b>Average annual cost</b>	-\$57127	-\$123579	-\$90353
<b>Confidence in mid-point estimate</b>	Medium		

Adding the estimates for reducing the acceptance timeframe and abolishing the reg 4.12(3) extension, the total cost estimates are:

Total Estimates of Regulatory Cost (patents and designs)			
	Lower	Upper	Mid-point
<b>Average annual cost</b>	\$49865	\$97108	\$73486
<b>Confidence in mid-point estimate</b>	Medium		

## 15. Registration of designs

### *Default registration*

Currently a design applicant must request either publication or registration within six months of filing, otherwise the application will lapse. This proposal would change the process so that, if the applicant does not request withdrawal, publication or registration within six months of filing, the application automatically proceeds to the formalities check and registration.

Currently, most applicants request registration at the time that they file their design application. However, around 9% of applicants wait to request registration until closer to the six month deadline. For these applicants the change would mean they would no longer have to file a request for registration but would still be able to delay registration by six months. (Part A below)

For the around 3% of applicants the change would mean that they would be required to file a request to withdraw their application within the six months from filing.<sup>45</sup> IP Australia would also reduce its administration costs, although these are not included here. (Part B below)

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<sup>45</sup> IP Australia data. 600 applicants (9%) currently request registration at a date after filing each year. 200 (3%) currently let their application lapse by not requesting publication or registration within 6 months of filing.

The changes would also lead to small number of designs proceeding to registration where the applicant would have previously allowed the default lapsing to occur. This may incur additional costs for a third party who requests examination of a design that would previously not have proceeded to registration. (Part C below)

The data inputs specific to the proposal are as follows:

Part A:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	Designs		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	540	660	600 applicants who currently request registration at a date after filing (+/- 10%)
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-5	-10	No longer have to file a separate request form.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-5	-10	No longer have to instruct agent to file separate form.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-5	-10	Agent no longer has to file separate form.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-5	-10	Agent no longer has to file separate form.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	10	Remove reminders about 6 month deadline.
<b>Time to train staff (B<sub>6</sub>)</b>	1	2	Instruct staff.
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Simple change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	-\$3,072	-\$6,900	-\$4,986
Confidence in mid-point estimate	Medium		

Part B:

IP right	Designs		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	180	220	200 applicants who currently let their applications lapse (+/- 10%)
Time ( $B_1$ ) - unrepresented Australian customers	5	10	Would have to file a separate form withdrawing the application.
Time ( $B_2$ ) - represented Australian customers	0	0	Would still have to instruct agent to withdraw, so no change.
Time ( $B_3$ ) – agents of Australian customers	5	10	Agent has to file a withdrawal form.
Time ( $B_4$ ) – agents of foreign customers	5	10	Agent has to file a withdrawal form.
Type of agent staff doing work	Administrative		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	Already counted in Part A
Time to train staff ( $B_6$ )	0	0	Already counted in Part A
Type of agent staff to be trained	Administrative		
Time to read new legislation ( $B_7$ )	0	0	Already counted in Part A.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
Average annual cost	\$1,209	\$2,956	\$2,083
Confidence in mid-point estimate	Medium.		

Part C:

IP right	Designs		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	0	5	Estimate of third parties who would request examination of designs that were registered despite owners not intending to enforce them.
Time ( $B_1$ ) - unrepresented Australian customers	15	60	Third party considers registered design and requests examination. Some would be simple and take little time to consider, others more complex.
Time ( $B_2$ ) - represented Australian customers	15	45	Third party considers registered design and instructs agent to request examination. Some would be simple and take little time to consider.
Time ( $B_3$ ) – agents of Australian customers	10	30	Agent considers design and requests examination. Some would be simple and take little time to consider.
Time ( $B_4$ ) – agents of foreign customers	10	30	Agent considers design and requests examination. Some would be simple and take little time to consider.
Type of agent staff doing work	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
Time to reconfigure IT systems ( $B_5$ )	0	0	Already counted in Part A
Time to train staff ( $B_6$ )	0	0	Already counted in Part A

<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Already counted in Part A.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$0	\$502	\$251
<b>Confidence in mid-point estimate</b>	Low		

#### *No publication option*

This change would remove the option of publication of a design. This would mean that all applicants would no longer have to consider whether to use the publication option (Part A below). Around 1 applicant per year that wants publication would have to request examination instead, at no extra cost. However, a very small number of third parties may request examination of registered designs that the owner has no intention of enforcing, incurring some costs for the third parties (Part B below). IP Australia would also reduce its administration costs, however these are not included here.

The data inputs specific to the proposal are as follows:

Part A:

<b>IP right</b>	<b>Designs</b>		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	6120	7480	6800 applications (+/- 10%)
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	-5	Applicant no longer has to consider publication option. Some would have spent no time considering it and some 5 minutes.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	-5	Applicant no longer has to consider publication option.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	0	-2	Agent no longer has to advise on publication. Some customers would not

			consider publication.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	-2	Agent no longer has to advise on publication.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	5	Simple change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$194	-\$35,861	-\$17,833
<b>Confidence in mid-point estimate</b>	Low.		

Part B:

<b>IP right</b>	Designs		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	0	5	Estimate of third parties who would request examination of designs that were registered despite owners not intending to enforce them.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	15	60	Third party considers registered design and requests examination. Some designs may be simple to consider, others more complex.
<b>Time (B<sub>2</sub>) - represented</b>	15	45	Third party considers registered design and

<b>Australian customers</b>			instructs agent to request examination.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	10	30	Agent considers design and requests examination.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	10	30	Agent considers design and requests examination.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Counted in Part A.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$0	\$502	\$251
<b>Confidence in mid-point estimate</b>	Low		

Total for Default Registration of Designs proposal:

<b>Estimates of Regulatory Cost - total</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$2,057	-\$38,801	-\$20,234
<b>Confidence in mid-point estimate</b>	Low		

## 16. Multiple copies of design representations

This change would involve removing the requirement to provide five copies of the design representation. The change would mean that for all paper design applications the applicant or their agent would save time in making and filing the additional representations.

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
<b>IP right</b>	Designs		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (<math>A_{V1} - AV_4</math>)</b>	40	50	Approximately 50 designs are filed in paper each year, with approximately 90% submitting the 5 copies. <sup>46</sup>
<b>Time (<math>B_1</math>) - unrepresented Australian customers</b>	-5	-15	Note there are often multiple representations (3 to 100+) for a single application.
<b>Time (<math>B_2</math>) - represented Australian customers</b>	0	0	No need to instruct agent on this.
<b>Time (<math>B_3</math>) – agents of Australian customers</b>	-5	-15	As above.
<b>Time (<math>B_4</math>) – agents of foreign customers</b>	-5	-15	As above.
<b>Type of agent staff doing work</b>	Administrative		
Inputs for one-off costs			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (<math>B_5</math>)</b>	0	0	
<b>Time to train staff (<math>B_6</math>)</b>	1	2	Simply inform staff not to make copies.
<b>Type of agent staff to be trained</b>	Administrative		

<sup>46</sup> Estimate from discussion with Designs Administrative Unit staff.



<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Note requirement removed from regulations.
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Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$313	\$272	\$292
<b>Confidence in mid-point estimate</b>	High		

## 17. Unjustified threats of infringement

*Align trade marks and PBR with patents and designs*

This change would involve amending:

- the PBR legislation to include protection against unjustified threats of infringement
- the trade marks legislation to use the term 'unjustified' instead of 'groundless' and to repeal s 129(5) so that an action in relation to an unjustified threat can no longer be stopped simply by commencing an infringement action.

This change would mean that some businesses would no longer face unjustified threats of infringement from trade mark and PBR owners. The benefits of this are difficult to estimate.

The data inputs specific to the proposal are as follows:

Part A - PBR:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	PBR		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	0	5	Estimate of businesses that wouldn't have to deal with unjustified threats. Note that around 2000 PBRs are in force.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-120	-1500	Businesses don't have to deal with unjustified threats. Wide

			range accounts for businesses deciding to ignore threats which then don't escalate, up to legal actions.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-120	-500	Businesses don't have to instruct agents to deal with unjustified threats
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-120	-1500	Agent doesn't have to deal with unjustified threats.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-120	-1500	Agent doesn't have to deal with unjustified threats.
<b>Type of agent staff doing work</b>	Professional		
Inputs for one-off costs			
Input	Lower	Upper	Notes
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative.		
<b>Time to read new legislation (B<sub>7</sub>)</b>	5	15	Some stakeholders would look at changes in more detail than others.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

Estimates of Regulatory Cost			
	Lower	Upper	Mid-point
<b>Average annual cost</b>	\$974	-\$21,152	-\$10,089
<b>Confidence in mid-point estimate</b>	Low.		

Part B – Trade marks:

Inputs for ongoing costs			
IP right	Trade marks		
Input	Lower	Upper	Notes
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	5	10	Businesses that don't have to deal with unjustified threats.

			Note that around 300,000 trade marks are in force.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-120	-1500	Businesses don't have to deal with unjustified threats. Wide range accounts for businesses deciding to ignore threats which then don't escalate, up to legal actions.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-120	-500	Businesses don't have to instruct agents to deal with unjustified threats.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-120	-1500	Agent doesn't have to deal with unjustified threats.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-120	-1500	Agent doesn't have to deal with unjustified threats.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	5	15	Some stakeholders would look at changes in more detail than others.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$510	-\$66,778	-\$33,644
<b>Confidence in mid-point estimate</b>	Low.		

*Introduce additional damages for unjustified threats for all rights*

This change would involve amending the IP legislation to enable additional damages to be awarded where an IP rights owner has made unjustified threats of infringement.

This change would mean that some businesses would no longer face unjustified threats of infringement from IP owners due to the higher potential penalties. The benefits of this are difficult to estimate.

The data inputs specific to the proposal are as follows:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	All IP rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	0	5	Estimate of businesses that don't have to deal with unjustified threats due to risk of additional damages. Note that around 450,000 IP rights are in force at any one time.
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	-120	-1500	Businesses don't have to deal with unjustified threats. Wide range accounts for businesses deciding to ignore threats which then don't escalate, up to legal actions.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	-120	-500	Businesses don't have to instruct agents to deal with unjustified threats.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-120	-1500	Agent doesn't have to deal with unjustified threats.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-120	-1500	Agent doesn't have to deal with unjustified threats.
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	5	15	Some stakeholders will look at changes in more detail than others.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$974	-\$16,175	-\$7,600
<b>Confidence in mid-point estimate</b>	Low.		

Total for Unjustified threats proposal:

<b>Estimates of Regulatory Cost – total</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$1438	-\$104,105	-\$51,333
<b>Confidence in mid-point estimate</b>	Low.		

## **18. Clarify ownership of plant breeder’s rights**

This change would involve amending the PBR Act to clarify that PBR can be granted to more than two breeders. This would not change current practice (which is to interpret the Act to permit more than two breeders), rather it is to amend the legislation to avoid any doubt.

The change would also involve clarifying that the Registrar can amend the Register to correct an obvious error or mistake. Again, this is already done in practice, and the change would just be to avoid doubt.

Since the change would not affect existing practice there would be no change to the regulatory burden. PBR customers would neither need to change their practice or even note that a change has been made.

## **19. Trade marks and shelf companies**

This change would involve amending the Trade Marks Act to remove the restriction preventing assignment of a trade mark to a body corporate ‘that is about to be constituted’, subject to the drafter’s advice.

This would mean that customers would be clearly permitted to assign their trade mark to an existing shelf company, and doing so would not invalidate the trade mark. This is important because many businesses purchase shelf companies which are already constituted but have no business activity, rather than going through the incorporation process.

This proposal would have no regulatory compliance costs. Applicants would see no change in what they receive from IP Australia for the foreseeable future and would not have to change any of their current administrative processes. Since there will be no change to what customers see or need to do, no one-off costs for training or education will be incurred.

This option involves no change in regulatory compliance costs.

## 20. Customs notices of seizure

This change would involve amending the trade marks legislation to bring it in line with the Customs Act 1901 and the Electronic Transactions Act 1999, so that Customs can issue seizure notices electronically or by other means approved by the Customs CEO.

This would mean that customers would be able to receive seizure notices electronically (such as e-mail) rather than having them delivered 'personally or by post'. This would speed up the process for seizure and resolving disputes, resulting in time savings for business.

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
IP right	Trade marks		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	2700	3300	Customs advise that they deliver 3000 seizure notices per year.
Time ( $B_1$ ) - unrepresented Australian customers	-2	-8	Unrepresented importers will not have to receive and scan paper copies of seizure notices.  Represented importers will receive the same notice from
Time ( $B_2$ ) - represented Australian customers	0	0	

			their agents as before, so no change for them.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	-2	-8	As above. Note that we do not have data for the proportion of importers who are represented. In the absence of better data, we assume the proportions of represented and unrepresented importers are the same as for trade mark applicants.
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	-2	-8	As above.
<b>Type of agent staff doing work</b>	Administrative		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Minor change

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	-\$5697	-\$28416	-\$17057
<b>Confidence in mid-point estimate</b>	Low		

## 21. Publishing personal information of IP attorneys

*Enable the PSB to publish attorney personal information*

This change would involve amending the legislation to provide the Professional Standards Board for Patent and Trade Marks Attorneys (PSB) with a clear authority to publish attorney names and publication addresses.

This change would mean that some businesses would no longer have to conduct other searches of attorneys who are not listed on the PSB site (Part A below) or spend time dealing with substandard work by non-attorneys, where they did not conduct an extra search and employed a non-attorney (Part B below). These calculations do not take into account other costs of substandard work, such as losing IP rights, as these cannot be estimated.

Note that attorneys are already required to provide this information to the PSB, so there is negligible or no change to the administrative requirements that attorneys must comply with.

The data inputs specific to the proposal are as follows:

Part A:

Inputs for ongoing costs			
IP right	All IP rights		
Input	Lower	Upper	Notes
Volume ( $A_{V1} - AV_4$ )	0	20	Estimate of businesses that would no longer have to conduct other searches for attorney information. Noting that 100,000 IP applications are filed each year and details for around 10 attorneys not being on the PSB website.
Time ( $B_1$ ) - unrepresented Australian customers	0	0	Businesses would not search for attorney information as do not intend to use an attorney.
Time ( $B_2$ ) - represented Australian customers	-5	-15	Time saved on searches for attorney information. Range due to some attorneys being easy to identify, others not.
Time ( $B_3$ ) – agents of Australian customers	0	0	



<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	0	
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	Simple change.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$194	\$311	\$252
<b>Confidence in mid-point estimate</b>	Medium		

Part B:

<b>Inputs for ongoing costs</b>			
<b>IP right</b>	All IP rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – AV<sub>4</sub>)</b>	0	5	Estimate of businesses that would have to deal with substandard work by non-attorneys, noting that 100,000 applications are filed each year
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	0	Businesses that do not use attorneys.
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	-500	Time saved dealing substandard work. Wide range due to up to a day being spent dealing with substandard work by non-attorneys.
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	0	0	

<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	0	
<b>Type of agent staff doing work</b>	Professional		
<b>Inputs for one-off costs</b>			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT systems (B<sub>5</sub>)</b>	0	0	
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>	Administrative		
<b>Time to read new legislation (B<sub>7</sub>)</b>	0	0	Counted in Part A.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$0	-\$653	-\$326
<b>Confidence in mid-point estimate</b>	Low.		

Total for publishing attorney information proposal:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$194	-\$964	-\$578
<b>Confidence in mid-point estimate</b>	Low.		

## 22. Prosecution of IP attorney offences

*Align prosecution timeframes for offences by incorporated attorneys with non-incorporated attorneys*

This change would involve amending the patents and trade marks legislation to enable actions for offences by incorporated attorneys to be commenced within five years of the alleged act rather than one year.

This change would mean that incorporated attorneys would have to become familiar with the changes. Some legal actions may be commenced which otherwise would not have, however the costs of this are not included as the costs of non-compliance with regulations are out of scope.<sup>47</sup>

The data inputs specific to the proposal are as follows:

Inputs for ongoing costs			
<b>IP right</b>	All IP rights		
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Volume (A<sub>V1</sub> – A<sub>V4</sub>)</b>	0	0	
<b>Time (B<sub>1</sub>) - unrepresented Australian customers</b>	0	0	
<b>Time (B<sub>2</sub>) - represented Australian customers</b>	0	0	
<b>Time (B<sub>3</sub>) – agents of Australian customers</b>	0	0	
<b>Time (B<sub>4</sub>) – agents of foreign customers</b>	0	0	
<b>Type of agent staff doing work</b>	Professional		
Inputs for one-off costs			
<b>Input</b>	<b>Lower</b>	<b>Upper</b>	<b>Notes</b>
<b>Time to reconfigure IT</b>	0	0	

<sup>47</sup> OBPR, *Regulatory Burden Measurement Framework Guidance Note*, p 3.

<b>systems (B<sub>5</sub>)</b>			
<b>Time to train staff (B<sub>6</sub>)</b>	0	0	
<b>Type of agent staff to be trained</b>			
<b>Time to read new legislation (B<sub>7</sub>)</b>	1	2	To be understood by the 24 incorporated attorney firms only.

Using the calculations described in the general methodology outlined above, we get the following final estimates:

<b>Estimates of Regulatory Cost</b>			
	<b>Lower</b>	<b>Upper</b>	<b>Mid-point</b>
<b>Average annual cost</b>	\$4	\$7	\$5
<b>Confidence in mid-point estimate</b>	Medium		

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